

REMARKS

This Amendment is submitted in response to the Office Action dated July 2, 2003. In the Office Action, the Patent Office objected to Claim 22 under 37 CFR §1.75 as being in improper form. The Patent Office also objected to Claim 19 under 37 CFR §1.75 as allegedly being a substantial duplicate of Claim 1. The Patent Office rejected Claims 3, 10 and 16 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Claims 1-21 and 23-32 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Geigle et al.* (U.S. Patent No. 5,372,989) in view of *Hacker et al.* (U.S. Patent No. 6,492,301).

By the present Amendment, Applicant amended Claims 3, 10, 16 and 22 and canceled Claim 19. Applicant submits that the application is in condition for allowance in view of the amendments and for the reasons that follow. Notice to that effect is requested.

In the Office Action, the Patent Office objected to Claim 22 under 37 CFR §1.75 as being in improper form. More specifically, the Patent Office alleged that Claim 22 is a multiple dependent claim and depends from Claim 20 which, allegedly, is a multiple dependent claim. In response, Applicant amended Claim 22 to depend from Claim 20. Applicant asserts that the amendment to Claim 22

overcomes the objection of the Patent Office. Notice to that effect is requested.

The Patent Office objected to Claim 19 under 37 CFR §1.75 as allegedly being a substantial duplicate of Claim 1. The Patent Office alleges that Claims 1 and 19 are composition claims, and Claim 19 merely adds how the composition is used. In response, Applicant canceled Claim 19. Applicant asserts that the cancellation of Claim 19 renders the objection of Claim 19 moot. Notice to that effect is requested.

The Patent Office rejected Claims 3, 10 and 16 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. More specifically, the Patent Office alleged that Claims 3 and 10 contain pesticide names which are misspelled. Claim 16, the Patent Office alleges, is dependent upon itself. In response, Applicant amended Claims 3 and 10 to provide proper names for the pesticides required by these claims. More specifically, in amended Claim 3, the terms "thifensulfuron" and "triflusulfuron" were amended as "thifensulfuron-methyl" and "triflusulfuron-methyl" respectively. In amended Claim 10, the term "imadacloprid" was amended to "imidacloprid". Applicant asserts that the other compound names are common names which are used internationally and are, therefore, correctly spelled. In addition, Applicant amended Claim 16 to

depend from Claim 13. Applicant asserts that the amendments to Claims 3, 10 and 16 overcome the objections with respect to these claims. Notice to that effect is requested.

Claims 1-21 and 23-32 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Geigle et al.* (U.S. Patent No. 5,372,989) in view of *Hacker et al.* (U.S. Patent No. 6,492,301). The Patent Office alleges:

"*Geigle et al* teach water dispersible granular (WDG) compositions comprising pesticidal particles bonded together by a water soluble heat-activated binder. The pesticidal particles comprise 5 to 95% of the composition (col 1, lines 41-43). Conventional WDG compositions may be made by various means known in the art (column 2), and may be a mix of two or more pesticides, taking into account incompatibility issues... Several of Applicant's recited herbicides, such as sulfonylureas, are included in Table 1 (columns 4-6). Among the surface active agents used in the compositions are several of Applicant's dispersants (column 11): polyethoxylated alkylphenols, EO/PO block copolymers, sodium naphthalene sulfonate formaldehyde condensates, lignosulfonates.

*Hacker et al.* teach the utility of combining (A) sulfonylurea herbicides (column 5), with (B) additional herbicidal agents (columns 10-34, 46-48)... Thus, it would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to have combined <50% of a primary agrochemical, a dispersing agent, and >50% of an optional secondary active agent in a single agrochemical formulation..."

*Geigle et al.* teach pesticidal particles that comprise a water soluble heat activated binder. The particles are agglomerates and may be produced according to three types of processes disclosed at column 3, lines 24 to 41. In the processes, heat is applied to the mixture so that the heat activated binder melts (process (2) and

(3)) or the particle slowly grows through agglomeration (process (1)). No teaching or suggestion exists in *Geigle et al.* that the compositions are obtainable by preparing a wetted premix which is in the form of a free-flowing powder as required by independent Claim 1. In fact, the processes disclosed in *Geigle et al.* rely on the heat-activated binder being melted to bind the other components which teaches away from the powder formed being free-flowing, as required by Claim 1.

Moreover, the thirteen examples in *Geigle et al.* describe compositions in which the level of the active ingredient is greatly in excess of 50%; for example 75% or more. No teaching or suggestion exists in *Geigle et al.* for one having ordinary skill in the art to provide compositions having a low level of active ingredient obtainable by a particular process. Further, no teaching or suggestion exists in *Geigle et al.* to provide compositions of this type having properties, such as improved bioavailability, which thereby reduces the need to use high levels of active ingredient. Applicant asserts that if such a teaching were present in *Geigle et al.*, then no reason would exist to exclusively provide examples of compositions having a high level of active ingredient.

*Hacker et al.* does not remedy the deficiencies of *Geigle et al.* in enabling a person of ordinary skill in the art to arrive at the present invention. More specifically, *Hacker et al.* merely

disclose a composition containing a combination of herbicides. The present invention addresses the problem of improving the delivery of an active component, which may itself be known, to a crop and thereby enabling a lower level of the active ingredient to be employed. However, the teaching provided in *Hacker et al.* limits one of ordinary skill in the art to only certain combinations of active ingredients.

At column 92, line 43 *et seq*, examples of different types of formulations are listed which include a dust, a wettable powder, a dispersion concentrate, an emulsifiable concentrate, water dispersible granules and extruder granules. The extensiveness of this list of formulations suggests that no criticality exists to the type of formulation employed. Moreover, no teaching or suggestion exists that the composition must be obtainable by preparing a wetted mix in the form of a free-flowing powder which is then extruded to produce granules as required by independent Claim 1.

Furthermore, no teaching or suggestion exists for one having ordinary skill in the art to combine the teaching of *Geigle et al.*, which is concerned with formulations containing a heat activated binder, with that of *Hacker et al.*, which relates to formulations requiring two active ingredients and which may be processed by any of a large variety of methods. Applicant submits that the Patent Office is merely "piece-mealing" references together, providing

various teachings and positively defined limitations of Applicant's invention. Of course, hindsight reconstruction of Applicant's invention is impermissible. Applicant respectfully submits that Claims 1-21 and 23-32 distinctly define the present invention from *Geigle et al.* or *Hacker et al.*, taken singly or in combination.

The Patent Office alleges that no unexpected results were obtained by Applicant's invention. However, the evidence presented provides a clear and direct comparison of the benefits of the invention in comparison to the performance of a commercially available product, LONDAX 60. This comparison is demonstrated in the crop tests in the application. In particular, Example 4 of the invention, containing bensulfuron-methyl and propanil, is tested with the former at 15g/ha and the latter at 3000g/ha (Treatment 3) and is examined in view of a comparative product (Treatment 2) containing LONDAX. The comparative product is applied at a rate of 60g/ha (100g of LONDAX) and STAM 80, a product containing 80% propanil which is applied at a rate of 3200g/ha (4000g of STAM). The crop to be protected is rice, and the efficacy against various weeds is assessed. Sixteen days after the first application, Example 4, i.e. Treatment 3, outperforms the comparative material in Treatment 2 in controlling certain weeds especially those which are susceptible to treatment by bensulfuron-methyl, such as, for example, *Heteranthera limosa* and *Scirpus maritimus*. The improved performance of Treatment 3 is achieved with a fraction of the

bensulfuron methyl applied in Treatment 2. Thus, the present invention provides clear and surprising results over directly comparable examples of products that not only are known but are produced commercially.

It is submitted that the question under §103 is whether the totality of the art would collectively suggest the claimed invention to one of ordinary skill in this art. In re Simon, 461 F.2d 1387, 174 USPQ 114 (CCPA 1972).

That elements, even distinguishing elements, are disclosed in the art is alone insufficient. It is common to find elements somewhere in the art. Moreover, most if not all elements perform their ordained and expected functions. The test is whether the invention as a whole, in light of all of the teachings of the references in their entirety, would have been obvious to one of ordinary skill in the art at the time the invention was made. Connell v. Sears, Roebuck & Co., 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983).

It is insufficient that the art disclosed components of Applicant's invention, either separately or used in other combinations. A teaching, suggestion, or incentive must exist to make the combination made by Applicant. Interconnect Planning Corp. v. Feil, 774 F.2d 1132, 1143, 227 USPQ 543, 551 (Fed. Cir. 1988).

Accordingly, Applicant asserts that the rejection of Claims 1-21 and 23-32 under 35 U.S.C. §103(a) is improper and should be withdrawn. Notice to that effect is requested.

In view of the foregoing remarks and amendments, Applicant respectfully submits that the application is now in condition for allowance. If, however, any outstanding issues remain, Applicant urges the Patent Office to telephone Applicant's attorney so that the same may be resolved and the application expedited to issue. Applicant requests the Patent Office to indicate all claims as allowable and to pass the application to issue.

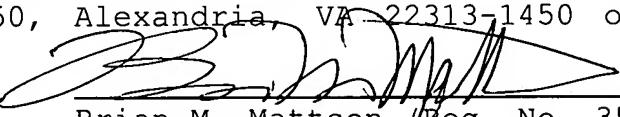
  
Respectfully submitted,

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**CERTIFICATE OF MAILING**

I hereby certify that this **Amendment** is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Mail Stop Non-Fee Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on November 03, 2003.

  
Brian M. Mattson (Reg. No. 35,018)